through (14) of this section, as
appropriate: or

* * * * * *  

(3) The owner or operator of an
affected source or process unit may
establish expanded or replacement
operating limits for the monitoring
parameters listed in paragraphs (e)(2)
and (10) through (14) of this section and
established in paragraph (i)(1) or (2) of
this section during subsequent
performance tests using the test
methods in §63.865.
* * * * * *  

(5) New, expanded, or replacement
operating limits for the monitoring
parameter values listed in paragraphs
(e)(2) and (10) through (14) of this
section should be determined as
described in paragraphs (j)(5)(i) and (ii)
of this section.

(i) The owner or operator of an
affected source or process unit that uses
a wet scrubber must set minimum
operating limits as described in
paragraph (j)(5)(i)(A) and (B) of this
section.

(A) Set the minimum scrubbing liquid
flow rate operating limit as the lowest of
the 1-hour average scrubbing liquid
flow rate values associated with each
test run demonstrating compliance with
the applicable emission limit in §
63.862.

(B) Set the minimum scrubber
drop operating limit as the lowest of
the 1-hour average pressure
drop values associated with each test
run demonstrating compliance with the
applicable emission limit in §63.862; or
for a smelt dissolving tank dynamic wet
scrubber operating at ambient pressure
or for low energy entrainment scrubbers
where fan speed does not vary, set the
minimum operating limit using one of
the methods in paragraph (j)(5)(i)(B)(1)
through (3) of this section.

(1) The minimum fan amperage
operating limit must be set as the
midpoint between the lowest of the 1-
hour average fan amperage values
associated with each test run
demonstrating compliance with the
applicable emission limit in §63.862 and
the no-load amperage value. The
no-load amperage value must be
determined using manufacturers
specifications, or by performing a no-
load test of the fan motor for each smelt
dissolving tank scrubber. It must be
verified that the scrubber fan is
operating within 5 percent of the design
RPM during the emissions performance
test; or

(2) The minimum percent full load
amperage (PFLA) to the fan motor must
be set as the percent of full load amps
under no-load, plus 10 percent. The
PFLA is calculated by dividing the
no-load amperage value by the highest of
the 1-hour average fan amperage values
associated with each test run
demonstrating compliance with the
applicable emission limit in §63.862
multiplied by 100. The no-load
amperage value must be determined
using manufacturers specifications, or
by performing a no-load test of the fan
motor for each smelt dissolving tank
scrubber. It must be verified that the
scrubber fan is operating within 5
percent of the design RPM during the
emissions performance test; or

(3) The minimum RPM must be set as
95 percent of the design RPM.
* * * * * *  

§63.867 Reporting requirements.
* * * * * *  

(c) * * * * * *  

(i) The operating limits established
during the performance test for
scrubbing liquid flow rate and pressure
drop across the scrubber (or
alternatively, fan amperage or RPM if
used for smelt dissolving tank
scrubbers).
* * * * * *  

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

[Docket DARS–2019–0049]

RIN 0750–AK14

Defense Federal Acquisition
Regulation Supplement: Modification of
DFARS Clause, "Payment for Subline Items
Not Separately Priced" (DFARS Case 2018–D050)

AGENCY: Defense Acquisition
Regulations System, Department of
Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend
the Defense Federal Acquisition
Regulation Supplement (DFARS) to
modify the text of an existing DFARS
clause to clarify its intent and conform
to current DFARS terminology, pursuant
to action taken by the
Regulatory Reform Task Force.

DATES: Comments on the proposed rule
should be submitted in writing to the
address shown below on or before
December 30, 2019, to be considered in
the formation of a final rule.

ADDRESSES: Submit comments
identified by DFARS Case 2018–D050,
using any of the following methods:

○ Regulations.gov: http://
www.regulations.gov. Submit comments
via the Federal eRulemaking portal by
entering “DFARS Case 2018–D050”
under the heading “Enter keyword or
ID” and selecting “Search.” Select the
link “Submit a Comment” that
 corresponds with “DFARS Case 2018–
D050.” Follow the instructions provided
at the “Submit a Comment” screen.
Please include your name, company
name (if any), and “DFARS Case 2018–
D050” on your attached document.

○ Email: osd.dfars@mail.mil. Include
DFARS Case 2018–D050 in the
subject line of the message.

○ Fax: 571–372–6094.

○ Mail: Defense Acquisition
Regulations System, Attn: Carrie Moore,
OUSD(A&S)DPC/DARS, Room 3B941,
3060 Defense Pentagon, Washington, DC
20301–3060.

Comments received generally will be
posted without change to http://
www.regulations.gov, including any
personal information provided. To
confirm receipt of your comment(s),
please check www.regulations.gov,
approximately two to three days after
submission to verify posting, except
allow 30 days for posting of comments
submitted by mail.

FOR FURTHER INFORMATION CONTACT: Ms.
Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to modify the
clause at DFARS 252.204–7002,
Payment for Subline Items Not
Separately Priced, to simplify the clause
text and conform terminology used in
the text to current Government contract
line item structure terminology. This
update will clarify the intent of the
clause, as it pertains to payment on
contracts that contain not separately
priced (NSP) items, when applicable.
The rule also adds a prescription for
DFARS 252.204–7002 in the applicable
DFARS subpart 204.7109, Contract
Clauses.

II. Discussion and Analysis

DFARS clause 252.204–7002 is
included in solicitations and contracts
when the value of a NSP contract line
or subline item is included in the price
of another contract line or subline item,
and it is necessary to withhold payment
on the priced contract line or subline item until the related NSP item has been delivered. The clause prohibits contractors from billing the Government for a priced item that contains the value of a NSP item until the related NSP items have also been delivered and accepted by the Government. While use of the clause is discretionary, it is beneficial to DoD in situations when NSP items are individual deliverables on a contract, even though the NSP items are a part or component of a priced item on another contract line or subline item.

Currently, the clause text can be read as prohibiting the contractor from billing for any portion of a contract line or subline item that is associated with an NSP item until all of the NSP items have also been delivered to and accepted by the Government. It is not the intent of the Government to prohibit any and all payment on such contract line or subline items until all deliveries have been made and accepted for both the priced and NSP items. This rule simplifies the clause text to clarify that a contractor can bill the Government for the individual unit price of a delivered item, once the NSP item associated with the individually priced item has also been delivered and accepted by the Government.

The rule also conforms the text of the clause to the current contract line item structure terminology by replacing “contract line item” with “contract line or subline item” and adds a prescription for the DFARS clause in the applicable section of DFARS 204.71.

The modification of this DFARS text implements a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13771, “Enforcing the Regulatory Reform Agenda,” which established a Federal policy “to alleviate unnecessary regulatory burdens” on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the Federal Register at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on these clauses. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.204–7002 and determined that the clause should be revised.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This proposed rule does not create any new provisions or clauses. The rule updates language used in the clause text to clarify its intent and conform with current contract line item structure terminology. This rule does not change the applicability of the affected clause.

IV. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule is not creating any new requirements for contractors or changing any existing policies and practices. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of DFARS clause 252.204–7002, Payment for Subline Items Not Separately Priced, to simplify and conform the clause text to current Government contract line item structure terminology, pursuant to action taken by the Regulatory Reform Task Force.

The objective of this proposed rule is to clarify the intent of the clause for contractors, when submitting invoices under contracts that contain items that are not separately priced (NSP). The modification of these DFARS clauses implements a recommendation from the DoD Regulatory Reform Task Force.

Based on an average of data for fiscal year 2016 through 2018 from the Federal Procurement Data System and Electronic Document Access, DoD awards annually approximately 12,435 contracts that include DFARS clause 252.204–7002 to 2,544 unique entities. Of the 12,435 awards, approximately 4,924 contracts (40 percent) are awarded to approximately 1,564 unique small business entities (60 percent). However, based on the available data and the objective of the rule, DoD does not anticipate that this proposed rule will significantly impact small business entities.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would meet the proposed objectives.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D050) in correspondence.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:


PART 204—ADMINISTRATIVE MATTERS

2. Amend section 204.7104–1 by—
I. Background

This rule proposes to modify the clause at DFARS 252.232–7000, Advance Payment Pool, to incorporate the information currently included in DFARS clause 252.232–7001, Disposition of Payments, and make minor changes to simplify the clause text. Combining these clauses will result in 252.232–7001 being removed from the DFARS.

II. Discussion and Analysis

When applying for advance payments under a contract in accordance with Federal Acquisition Regulation (FAR) 32.408, contractors must provide the name and address of the financial institution, also referred to as the “disbursing office,” at which the contractor will establish a special account to serve as the depository for the advance payments. FAR 32.406(b) requires the Government to use either a letter of credit or a direct Treasury check to make advance payments to a contractor, unless a waiver is obtained from the Treasury Department.

A letter of credit is issued by the Government when the contract and the contractor meet certain criteria. The letter of credit enables the contractor to withdraw Government funds from the special account to cover the contractor’s own disbursements of cash for contract performance. If the contract and/or contractor cannot meet the criteria, a letter of credit is not issued, and the contractor must submit a properly certified invoice or voucher to the Government for approval. Upon approval of the invoice or voucher, a dual Treasury check is issued to the disbursing office for dissemination to the contractor’s special account.

Prior to contract award and in accordance with FAR 32.4, the Government executes a determination supported by a written findings, authorization for the use of advance payment, and an agreement identifying the terms and conditions for advance payment under the contract. FAR clause 252.232–7001, Advanced Payment, is included in all solicitations and contracts under which the Government will provide advance payments. The FAR clause advises contractors that advance payment will be made via a letter of credit or submission of a properly certified and approved invoice.